

DEC 14 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL ANGEL DIAZ-ROSAS,

Defendant - Appellant.

No. 04-10649

D.C. No. CR-04-00822-JAT

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Miguel Angel Diaz-Rosas appeals from his guilty plea conviction and sentence for illegal re-entry after deportation in violation of 8 U.S.C. § 1326(a), with sentencing enhancement pursuant to 8 U.S.C. § 1326(b)(2).

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Diaz-Rosas, who was sentenced under the mandatory Sentencing Guidelines before the Supreme Court its issued its decision in *United States v. Booker*, 125 S. Ct. 738 (2005), asserts that the district court erred by determining that his prior criminal conviction constituted an act of violence for purposes of a sentencing enhancement.

We dismiss the appeal because Diaz-Rosas, in his plea agreement, knowingly and voluntarily waived his right to appeal. *See United States v. Cortez-Arias*, 403 F.3d 1111 (9th Cir. 2005), *as amended*, No. 04-10184, 2005 WL 2401877 (9th Cir. Sept. 30, 2005) (holding that pre-*Booker* waiver of right to appeal precludes appellate relief under *Booker*).

DISMISSED.